

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAKAZULU KASENZANGAKHONA,

Petitioner,

v.

L. CANO, et al.,

Respondents.

No. 1:24-cv-00358-SKO (HC)

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION
TO SUMMARILY DISMISS PETITION**

**[TWENTY-ONE DAY OBJECTION
DEADLINE]**

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant habeas petition on March 27, 2024, challenging the execution of his sentence. The Court finds that the petition is unexhausted, it should abstain from interfering in state proceedings, and it lacks jurisdiction. Thus, the Court will recommend the petition be DISMISSED.

DISCUSSION

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of

1 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
2 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.
3 2001).

4 B. Claim for Relief

5 In this case, Petitioner contends that prison staff have failed to remove a "VIO
6 Administrative Determinate" classification from his file. He claims this in turn prevents him
7 from being transferred to a lower-level custody facility or fire camp which would allow him to
8 earn additional credits against his sentence and secure earlier release. According to exhibits
9 submitted with his petition, an annual review was conducted by the Unit Classification
10 Committee ("UCC") on November 9, 2023, and Petitioner was referred to the Classification
11 Service Representative ("CSR") with a recommendation that the classification be removed and
12 Petitioner be transferred to a Level 1 facility. (Doc. 1 at 10.). On December 16, 2023, the Office
13 of Grievances noted that Petitioner's case was awaiting review by the CSR. Then on February
14 15, 2024, the CSR reviewed the recommendation and determined that certain issues needed to be
15 addressed prior to removal of the classification; specifically, staff failed to address all of
16 Petitioner's convictions required to be reviewed. (Doc. 1 at 28.) The CSR noted that the UCC
17 failed to address each violent felony conviction and the status of VIO for each. (Doc. 1 at 28.)
18 The matter was referred back to the UCC for another review. (Doc. 1 at 28.) It appears Petitioner
19 is currently awaiting that UCC review and recommendation. Petitioner seeks an order from the
20 Court directing prison staff to uphold the original recommendation and transfer him to a lower-
21 level custody facility. The petition must be dismissed for several reasons.

22 C. Exhaustion

23 A petitioner who is in state custody and wishes to collaterally challenge his conviction by
24 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).
25 The exhaustion doctrine is based on comity to the state court and gives the state court the initial
26 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
27 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

28 A petitioner can satisfy the exhaustion requirement by providing the highest state court

with a full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full and fair opportunity to hear a claim if the petitioner has presented the highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

Additionally, the petitioner must have specifically told the state court that he was raising a federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme Court reiterated the rule as follows:

In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in order to give the State the “opportunity to pass upon and correct alleged violations of the prisoners' federal rights” (some internal quotation marks omitted). If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution. If a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court.

Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his federal claims in state court *unless he specifically indicated to that court that those claims were based on federal law*. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the *petitioner must make the federal basis of the claim explicit either by citing federal law or the decisions of federal courts, even if the federal basis is “self-evident,”* Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under state law on the same considerations that would control resolution of the claim on federal grounds. Hiiivala v. Wood, 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996); . . .

In Johnson, we explained that the petitioner must alert the state court to the fact that the relevant claim is a federal one without regard to how similar the state and federal standards for reviewing the claim may be or how obvious the violation of federal law is.

Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added), *as amended by Lyons v. Crawford*, 247 F.3d 904, 904-5 (9th Cir. 2001).

The recommendation that Petitioner be transferred to a lower-level facility occurred on November 9, 2023, and the CSR referred the matter back to the UCC on February 15, 2024.

Petitioner then filed the instant habeas petition in this Court, bypassing the state court process. He has not presented his claims to the California courts as required by the exhaustion doctrine. Accordingly, the Court must dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001).

D. Younger Abstention

Under principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings by granting injunctive or declaratory relief except under special circumstances. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is required when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue. Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Dubinka v. Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). The rationale of Younger applies throughout the appellate proceedings, requiring that state appellate review of a state court judgment be exhausted before federal court intervention is permitted. Dubinka, 23 F.3d at 223 (even if criminal trials were completed at time of abstention decision, state court proceedings still considered pending).

Here, the UCC review process is still ongoing. Petitioner has not yet raised his challenge to the California courts, and California has an important interest in passing upon and correcting violations of a defendant's rights. Roberts v. Dicarlo, 296 F.Supp.2d 1182, 1185 (C.D. Cal. 2002) (citing Koerner v. Grigas, 328 F.3d 1039, 1046 (9th Cir. 2003)). The trial court remains available as an adequate forum for Petitioner to seek relief. The California Court of Appeal and the California Supreme Court are also adequate forums for Petitioner to seek further relief for his claims. Roberts, 296 F.Supp.2d at 1185. Therefore, the Court recommends abstaining from interfering in state proceedings pursuant to Younger.

E. Lack of Jurisdiction

Petitioner does not challenge his conviction. He instead challenges the conditions of his confinement and seeks a transfer between facilities. Although Petitioner mentions early in his petition that a transfer to a fire camp could earn him more credits against his sentence, there is

nothing to indicate that transfer to a fire camp is possible. The exhibits Petitioner submits only indicate a transfer to a Level 1 facility, and such transfer would not entitle Petitioner to earn additional time credits.

A habeas corpus petition is the correct method for a prisoner to challenge the “legality or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner’s claims sound in civil rights and not in habeas.

ORDER

IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District Judge to the case.

RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be DISMISSED WITHOUT PREJUDICE.

This Findings and Recommendation is submitted to the United States District Court Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one days (21) after being served with a copy, Petitioner may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: April 3, 2024

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE